

AG Contract No.: KR05-0229TRN
ADOT ECS File No.: JPA 05-019
Project No.: HRF-EGR-0-815
Project: Roadway reconstruction on Main St.
Section: Town Limits South to Central
TRACS No.: HF115 01C
Budget Source Item No.: N/A
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF EAGAR

THIS AGREEMENT is entered into June 14, 2005, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF EAGAR, ARIZONA, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The State has approved the exchange of \$420,200.00 in Highway User Revenue Funds (HURF) in Fiscal Year 2005 to the Town for roadway reconstruction on Main Street. Such funds will be repaid to the State by withholding from the NORTHERN ARIZONA COUNCIL OF GOVERNMENTS (NACOG) federal funds and the obligation authority for federal funds is \$476,545.00 in Fiscal Year 2005.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27552
Filed with the Secretary of State
Date Filed: 6/14/05
Janice K. Brewer
Secretary of State
By: Mary Van Doren

II. SCOPE OF WORK

1 The Town shall:

a. Provide design plans, specifications and such other contract documents and services required for bidding and roadway reconstruction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the \$420,200.00 project construction cost for Fiscal Year 2005, upon award of the construction project.

d. Invoice the State for thirty percent of the \$420,200.00 project construction cost for Fiscal Year 2005, at the thirty percent and sixty percent project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the \$420,200.00 project construction cost for Fiscal Year 2005 at the one hundred percent project construction completion stage, after the Town, NACOG, and the State (ADOT) representatives have completed final project review.

2 The State shall:

a. Within 30 days after receipt of an invoice and a letter confirming the construction project has been awarded, advance the Town thirty percent of the HURF funds.

b. Within 30 days after receipt and approval of construction invoices at the thirty and sixty percent construction completion stages, advance the Town HURF funds in the amount of thirty percent at each invoiced stage for construction.

c. After final project review, and within 30 days after receipt and approval of construction invoices for the remaining ten percent of the project construction, advance the Town HURF funds in the final ten percent amount of the \$420,200.00 for the roadway reconstruction in Fiscal Year 2005.

d. Withhold from NACOG, federal funds and the obligation authority of federal funds in an amount of \$476,545.00 in Fiscal Year 2005 for roadway reconstruction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The Town assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The Town shall require its contractors to name the State and Arizona Department of Transportation (ADOT) as an additional insured in the contractor's policies. The Town shall also require its contractors to name the State and ADOT as an additional indemnitee in the Town's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the

State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the Town, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State

4. This Agreement may be canceled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX (602) 712-7424

Town of Eagar
Town Manager
174 South Main Street
Eagar, AZ 85925

10. Pursuant to Arizona Revised Statutes § 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

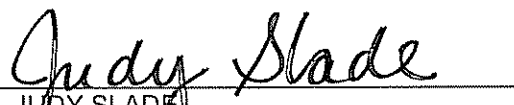
TOWN OF EAGAR

STATE OF ARIZONA
Department of Transportation

By 
SANDRA BURK
Mayor

By 
DALE BUSKIRK, Division Director
Transportation Planning Division

ATTEST


By 
JUDY SLADE
Town Clerk

G:05-019-Eagar-HURF
10March2005-IH

APPROVAL OF THE TOWN OF EAGAR ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF EAGAR, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 12 day of April, 2005.



Town Attorney

RESOLUTION NO. 2005- 8

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL
OF THE TOWN OF EAGAR, COUNTY OF APACHE, STATE
OF ARIZONA, AUTHORIZING AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE
TOWN OF EAGAR AND THE STATE OF ARIZONA
CONCERNING HIGHWAY USER REVENUE FUNDS
(HURF) IN FISCAL YEAR 2005.

WHEREAS, the Town of Eagar, a municipal corporation, and the State of Arizona are
desirous to enter into an agreement concerning the Highway User Revenue Funds (HURF) in
Fiscal Year 2005 to the Town for roadway reconstruction on Main Street.

NOW THEREFORE, BE IT RESOLVED that the Eagar Town Council, at a properly
called meeting of the council, hereby authorizes the Mayor to enter into an intergovernmental
agreement with the State of Arizona concerning the Highway User Revenue Funds (HURF) in
Fiscal Year 2005 to the Town for roadway reconstruction on Main Street. The Mayor is
authorized to sign all necessary documents to effect the agreement.

PASSED AND ADOPTED AND APPROVED by the Mayor and Town Council of the
Town of Eagar, Arizona this 5th day of April, 2005.

ATTEST:

APPROVED:

Judy L. Slade
JUDY SLADE, TOWN CLERK

Sandra L. Burk
SANDRA BURK, MAYOR

APPROVED AS TO FORM:

Douglas E. Brown
DOUGLAS E. BROWN, TOWN ATTORNEY

CERTIFICATION

I hereby certify that the foregoing Resolution No. 2005-8 was duly passed and adopted by the Mayor and the Town Council of the Town of Eagar, Arizona, at a meeting held on the 5th day of April, 2005, that they vote thereon was 6 ayes, 0 nays and that the Mayor and 5 Council members were present thereat.

Judy Slade
JUDY SLADE, TOWN CLERK



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

TERRY GODDARD
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0229TRN (**JPA 05-019**), an Agreement between public agencies, i.e., *The State of Arizona* and *The Town of Eagar*, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 7, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

Susan E. Davis
Assistant Attorney General
Transportation Section

SED:mjf
Attachment
908569